

Frequently Asked Questions In-Use Off-Road Diesel Vehicle Regulation

Private Fleet Size Determination and Reporting Requirements

Q - Why is fleet size important in the In-Use Off-Road Diesel Vehicle Regulation?

- A -** Compliance requirements for ARB's off-road regulation vary for each fleet, and are determined based on the total off-road horsepower contained in the fleet. In the off-road regulation, there are three "fleet size categories": small, medium, and large; a fleet will have different reporting and compliance requirements depending upon their fleet category classification.

To determine the fleet size category, the horsepower of all mobile off-road vehicles under common ownership or control must be summed. Low-use vehicles, dedicated snow-removal vehicles, and vehicles used solely for emergency operations should not be included in this sum when determining the fleet size category.

Q - What do you mean by common ownership or control?

- A -** If vehicles are under common ownership, this means they are owned by the same person, corporation, partnership, or association. In addition, vehicles managed day to day by the same directors, officers, or managers, or by corporations controlled by the same majority stockholders are considered to be under common control even if their title is held by different business entities.

Q - How do private fleets determine their fleet size?

- A -** Vehicles owned by private companies determine their fleet size by adding up all the horsepower in their fleet. If a company has subfleets then the total fleet size is the sum of all horsepower for each subfleet.

Q - If a company has separate locations in California, can they comply and report fleets separately at different locations, or must the company to report/comply as a whole?

- A -** If a company has separate subfleets under the control of different responsible officials (fleet managers) because they are part of different subsidiaries, divisions, or other type of organizational structure, each subfleet can report and comply separately with the regulation. However, the total horsepower of the company must be determined by adding up the total horsepower under common

ownership or control in order to determine the total fleet size, and subsequently, the first compliance date for the fleet. Fleets that have the same majority stockholders (over 50 percent) are considered to be under common control. For example, if one parent company is comprised of three 2,000 hp fleets (at different locations), since the total horsepower of the parent company (all the locations added together) is greater than 5,000 hp (a large fleet), each location can report/comply separately, but must comply with the large fleet targets. For information on how to report subfleets, please visit <http://www.arb.ca.gov/msprog/ordiesel/documents/doors/subfleets.pdf>

Please see also the further examples below.

Example 1 – Parent/Child Company

XYZ Corporation (in California) forms a new, wholly owned corporation, South Coast Paving and Grading (in California), and secures a different federal tax identification number for it. While XYZ Corporation and South Coast Paving and Grading can report and comply separately with the regulation, because they are under common ownership, the total horsepower of both must be summed in order to determine the total fleet size, and subsequently, the first compliance date for both corporations' fleets.

Example 2 – Common Ownership

ABC Company and 123 Company are wholly-owned subsidiaries of Alphabet Group Incorporated. They were acquired by Alphabet Group Incorporated in 1950 and 1970, respectively. Alphabet Group Incorporated is located in Nevada, however ABC Company and 123 Company are both located in California and each have their own Federal Tax Identification numbers. In addition, they each have unique California State Contractor's license numbers. Both ABC and 123 are decentralized, with most of the decision making pushed down to the operating company level. However, the corporate office centralizes things like insurance, bonding, cash, and financial statement consolidation.

Because ABC and 123 are under common ownership, the total horsepower of this fleet must be determined by adding up all the horsepower for ABC and 123, which will determine the first compliance date for the fleet. However, ABC and 123 can report and comply separately with the regulation

Example 3 – Common Control

Bill Brown owns Brown Construction and controls the day to day operation of his fleet. Bonnie Brown is the owner of Bonnie's Earthmoving, but her vehicles are controlled on a day to day basis by Mr. Bill Brown. Mr. Brown makes decisions regarding vehicle use, maintenance, purchases and sales, etc. Because Brown Construction and Bonnie's

Earthmoving fleets are under the common control of Mr. Brown, their horsepower must be summed to determine their fleet size. If, for example, the summed horsepower is over 5,000 hp, both would need to meet the large fleet requirements.

Example 4 – 50/50 Ownership

John Smith owns Company A, and Jane Doe owns Company B. John and Jane also each both own 50 percent of Company C. Because neither John nor Jane have a majority stake in Company C (neither have more than 50 percent), as long as Company C is not under common control with either Company A or B, neither John nor Jane must add Company C's horsepower to their own when determining fleet size. Each fleet - Company A, B, and C - would report separately and determine its fleet size separately.

If, however, John controlled both the Company A and Company C fleet on a day-to-day basis (managing the vehicles' use, maintenance, purchases and sales, etc.), then Company A and Company C's horsepower would need to be combined when determining fleet size.

ARB enforcement may use organizational documents of fleet owners (such as articles of incorporation) to validate fleet ownership.

Q - Do low-use vehicles count towards the total hp of a fleet? Are low-use vehicles included when calculating hp to be turned over/retrofit under BACT?

A - Low-use vehicles should NOT be included when calculating a fleets' total horsepower, and should also not be included in the fleet average calculator, or any of the fleet average/target calculations. Therefore, when calculating the horsepower necessary to meet the turnover/retrofit BACT requirements, low-use vehicles should not be included in the total horsepower, and should also not be "turned over"/retrofitted to meet the BACT requirements.